UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

MILLER INVESTMENT TRUST,	_))
	Plaintiff,))
v.)
MORGAN STANLEY & CO. INCORF KPMG HONG KONG,	ORATED and) CIVIL ACTION) NO. 1:11-cv-12126 JLT
	Defendants.)
	2 0101100111051)
		,)
		,)

DEFENDANT KPMG HONG KONG'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. Pro. 9(b) and 12(b) (5) & (6) and the Private Litigation Securities Reform Act, defendant KPMG, a Hong Kong partnership ("KPMG Hong Kong") moves to dismiss the Amended Complaint as against it on the grounds that:

- 1. Plaintiff has failed properly to serve KPMG Hong Kong.
- 2. Plaintiff has failed to plead a Section 18 claim with sufficient particularity to satisfy either the Private Securities Litigation Reform Act of 1995 or Fed. R. Civ. P. 9(b).
- 3. Plaintiff has failed to plead a claim of negligent misrepresentation sufficiently to satisfy the pleading requirements of Fed. R. Civ. Pro. 8(a) & 9(b) and does not plead facts that give rise to a duty on the part of KPMG Hong Kong to Plaintiff.

In connection with this motion, KPMG Hong is filing a memorandum of law and affidavits of Sng Keng Yeow Melvin, O'Brien Ian Charles, and Deana El-Mallawany. KPMG Hong Kong filed an affidavit of Ngan May Wan in connection with its earlier motion to dismiss

the initial Complaint and, in view of its reliance on that affidavit in connection with this motion, is re-filing it for ease of reference.

Request for Oral Argument

Pursuant to Local Rule 7.1(d), KPMG Hong Kong respectfully requests oral argument on this motion.

Wherefore, KPMG Hong Kong respectfully requests that the Court dismiss the Amended Complaint as against it in its entirety.

Respectfully submitted,

KPMG Hong Kong

By its attorneys,

/s/ Steven W. Hansen

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BINGHAM MCCUTCHEN LLP

Attorneys for Defendant KPMG Hong Kong (Appearing Specially)

Dated: October 12, 2012

LOCAL RULE 7.1 CERTIFICATION

I, Steven W. Hansen, certify pursuant to Local Rule 7.1 that on October 10, 2012, counsel for defendant KPMG Hong Kong conferred in good faith with counsel for Plaintiff but were unable to resolve or narrow the issues raised by this motion to dismiss.

/s/ Steven W. Hansen, BBO #220820

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system to be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that paper copies will be sent to any person indicated on ECF as a non-registered participant on October 12, 2012.

/s/ Deana El-Mallawany, BBO #674825